

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6027

PETITION OF MARTIN SEGAL

(Hearings held November 10, and November 17, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, December 22, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326 and 59-C-1.326(a)(2)(A). The petitioner proposes to construct: (1) an accessory structure/pool in the front yard that requires a variance as accessory structures are to be located in the rear yard only; and (2) an accessory structure/pergola in the front yard and that requires a variance of fourteen (14) feet as it is within fifty-one (51) feet of the front lot line. The required front lot line setback is sixty-five (65) feet.

Anne C. Martin, Esquire, represented the petitioner at the public hearing. Susan Scala-Demby, Casework Manager, Department of Permitting Services (DPS) provided testimony at the November 17, 2004 hearing.

The subject property is Lot 20, Block 34, Holly Hill Subdivision, located at 7904 Deepwell Drive, Bethesda, Maryland, 20817, in the R-200 Zone (Tax Account No. 00855442).

Decision of the Board: Requested variance for the accessory structure (pool) **granted**.
Requested variance for the accessory structure (pergola) **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 20 x 40 foot pool and the construction of a 20 x 26 foot pergola in the northwest section of the property.
2. The lot is surrounded on three sides by public roads; Deepwell Drive at its western boundary, Hollyoak Drive at its northern boundary; and Deepwell Drive again at its eastern boundary. The petitioner testified that the three sides of the subject property that face the street are treated as front yards and the interior lot line that adjoins Lots 21 and 24 is considered a side yard. The lot size is 1.2 acres, and has a house that has existed on the property since 1950. See, Exhibit No. 8 [zoning vicinity map]. The house on the property faces its southern boundary and the lot has a curb-cut for each side of Deepwell Drive.

3. Ms. Martin stated that the property does not have a designated rear yard and that the proposed structures would require a variance wherever they were to be located on the petitioner's property. Ms. Martin stated that the constraints of the lot do not permit an alternative siting of the proposed construction.
4. Ms. Martin stated that the pergola would be located in the western section of the subject property facing Deepwell Drive, which is considered a front yard. The pergola must meet a 65-foot setback requirement. The petitioner testified that after a discussion with his landscaper, the pergola's placement is the only logical location for the structure on the lot because its proposed location would maintain the property's existing tree line and provide the desired sunlight. The petitioner testified that he designed the pergola to be located where it should be, and then looked at the need for a variance.
5. The record contains a memorandum to the Board from Ms. Scala-Demby with an attachment titled "Minimum Setback Requirements – Lots With No Rear Yard". See, Exhibit Nos. 14(a) and 14(b). Ms. Scala-Demby testified that DPS typically sees lots that are corner lots, thru lots and flag-shaped or pipe-stemmed lots, anything else is atypical. Ms. Scala-Demby testified that a typical corner lot has two intersecting streets and two interior lot lines. DPS determined that the petitioner's property was not a corner lot or a thru lot and that the property's shared boundary was a side yard.
6. Ms. Scala-Demby testified that the subject property is considered to have three fronts and that it is similar to the lots described in her memorandum. Ms. Scala-Demby testified that the subject property only has one side that could be construed as a corner because the angle of the other side of the property where the two streets intersect exceeds 135 degrees, which is the maximum angle recognized as forming a corner. Ms. Scala-Demby testified that such atypical lots are reviewed by the department on a case-by-case basis for determination of the required setbacks. See, Exhibit No. 16(b) [subject property diagram].
7. The property has a septic tank located in the northeast section of the property and a well located in the southern section of the property. All structures must be set back 10 feet from a septic tank. See, Exhibit No. 15(c) [site plan showing septic tank and well]. Ms. Scala-Demby confirmed with the Well and Septic Section that a 30-foot setback is required for the well. See, Exhibit No. 17 [well dimensions].
8. Ms. Martin stated that the new construction would be screened by the property's existing trees and vegetation and the petitioner testified that additional landscaping will be installed.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance for the accessory structure/pergola must be denied. The requested

variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the proposed construction of an accessory structure/pergola is not driven by any exceptional condition peculiar to the property, but that the proposed site for the pergola is in the proposed location because the petitioner has identified it as the most “logical” spot on the property for the structure. The Board finds that the reasons given for the location of the pergola do not satisfy the criteria the Board must find in order to support the grant of the requested variance. The Board finds that there is ample space within the property’s building envelope, particularly east of the proposed pool, in which to construct a reasonable sized pergola without encroaching into the septic setback. Consequently, the petitioner would not suffer any practical difficulty in complying with the 65-foot setback restriction.

The petition for the construction of an accessory structure/pergola does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of fourteen (14) feet from the required sixty-five (65) foot front lot line setback for the construction of an accessory structure/pergola is denied.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance for an accessory structure/pool can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The subject property is a lot that is surrounded on three sides by public roads.¹ The property has a septic tank located in the northeast section

¹ We note that, contrary to the petitioner’s assertions and Ms. Scala-Demby’s testimony, the Zoning Ordinance does not provide for a “front yard” setback; rather, it requires a 65-foot setback from each street line for accessory structures. Section 59-C-1.326(a)2)(A). Thus, the property does not have three front yards, but three street line setbacks. Further, we disagree that the lot has no rear yard. We read the Zoning Ordinance to require that the western interior lot line is to be deemed the rear lot line. Indeed, if it were a side lot line as suggested by DPS, the “rear yard” would be even more severely

of the property and a well located in the southeast section of the property. The septic tank requires a minimum of a ten-foot setback from all structures and the well requires a 30-foot setback from all structures. The Board finds that the uniquely peninsular shape and the resulting three street line setbacks combined with the location of the well in the rear yard and the resulting 30-foot well setback, are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in practical difficulties to the property owner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of an accessory structure/pool is the minimum reasonably necessary, as the pool cannot be feasibly located in the rear yard without conflicting with the location of the well.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the pool will be screened by the existing vegetation and the additional landscaping to be installed by the property owner and that the variance will not be detrimental to the use and enjoyment of the adjoining or neighboring properties.

Accordingly, the requested variance for the construction of an accessory structure/pool in the front yard is granted subject to the following conditions:

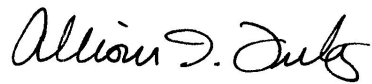
1. The petitioner shall be bound by all of his testimony and exhibits of record, and the representations of his attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) through 4(c).

The Board adopted the following Resolution:

constrained by a 12-foot side setback, rather than the 7-foot rear setback shown on the variance plan (Exhibit No. 4(a)). See Section 59-C-1.326(a)(2)(B) and (C).

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Louise L. Mayer, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 22nd day of December, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.